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Supreme Court, U.S.
FILED
AUG 26 2002
CLERK

CASE NO. 02 -79

IN THE
SUPREME COURT OF THE UNITED STATES
October Term , 2001

JACQUELINE J. MILLER-WAGENKNECHT
Petitioner,
V.
CITY OF MUNROE FALLS AND BETTE LYONS
Respondents

On Petition For Writ Of Certiorari
To The Supreme Court of Ohio

PETITIONER'S REPLY BRIEF TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONER'S WRIT OF CERTIORARI

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PETITIONER JACQUELINE J. MILLER-WAGENKNECHT 'S REPLY BRIEF TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONER'S WRIT OF CERTIORARI

INTRODUCTION

Petitioner shall reply to only new issues raised by Respondents . Because of page limitation Petitioner shall address only some of the myriad of abuses by Respondents.

I. PETITIONER'S ADDITIONAL COMPELLING REASONS TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT.

A. VIOLATION OF OATH OF OFFICE

Respondents attorney's to practice before this Honorable Court as well as the State of Ohio had to sign/swear to an oath. The United States Supreme Court requires that each applicant shall sign the following oath

> " I, _____, do solemnly swear(or affirm) that as an attorney and as a counselor of this Court , I will conduct myself **uprightly** and according to law, and that I will support the Constitution of the United States."
> (Rule 5 sec.4 of the Rules of The Supreme Court of The United States. Emphasis added)

Likewise, for induction to the Bar in Ohio, Gov. Bar R. I Sec. 8 states that each applicant accepted for admission to the

practice of law in Ohio shall take the following oath of office:

> " I,_____, hereby (swear or affirm) that I will support the Constitution and laws of the United States and the Constitution and the laws of Ohio, and I will abide by the Code of Professional Responsibility.
>
> In my capacity as an attorney and officer of the Court, I will conduct myself with dignity and civility and show respect toward judges , court staff, clients, fellow professionals, and all other persons.
>
> I will honestly, faithfully, and competently discharge the duties of an attorney at law.(So help me God)" Gov. Bar R. I. Sec 8 para A)

Obviously Respondents' attorneys do not take their oaths seriously or fear any repercussion from their violation. Why else would Respondents have no apprehension of beginning their Brief in Opposition with a libelous statement. Respondents' states as fact that Petitioner is a tax protestor. The only thing Petitioner protests is having two tax Administrators attempt to abuse their position of Authority as retaliation when Petitioner refused to fund Tax Administrator JoAnn Raber's personal needs.

Respondents sole purpose to make such a libelous statement was to induce an evil opinion of Petitioner in this Honorable Court's mind. In today's vernacular , a tax protestor has a negative connotation that equates to a presumption that the labeled person is involved in an illegal or unlawful act.

Since Respondents cannot dispute the law or facts their tactic was to create new law , new facts and attack Petitioner's integrity and character. Respondents' strategy was to create a

false image of Miller- Wagenknecht that would be so repugnant to the United States Supreme Court that when confronted with the true facts and the proper law, the Court would be tuned out. What was this false image that the court would have to filter information through? That Miller-Wagenknecht refused to pay taxes and was a tax protestor. [Res. Questioned Presented page i].

It is undisputed and the record below supports that Miller-Wagenknecht had always hired tax professionals, a CPA firm , and / or tax attorneys to handle any tax obligation. Such is this case even today. It was never disputed that Miller-Wagenknecht paid taxes.

Not being an attorney, Petitioner did not understand that she should have started the Petition For Writ Of Certiorari with derogatory name calling. Instead Petitioner argued the true facts and law.

B. VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY

Disciplinary Rule 1-102 states in pertinent part that:

" (A) A lawyer shall not:

(4) Engage in conduct involving dishonesty, fraud, deceit , or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on then lawyer's fitness to practice law...

Disciplinary Rule 7-102 states in pertinent part that

(A) In his representation of a client, a lawyer shall not:

(3) Conceal or knowingly fail to disclose that which is required by law to reveal.
(4) Knowingly used perjured testimony or false evidence.
(5) Knowingly make a false statement of law or fact.
(7) Counsel or assist his client in conduct that the lawyer knows to be illegal conduct or fraudulent.

Respondents' Attorneys throughout this lawsuit have made an art of violating the Code of Professional Responsibility. What follows are examples of Respondents Attorneys' Conduct that violates the above listed disciplinary rules.

For example when applying the law to Petitioner , compliance with the statute or ordinance becomes one of strict liability. However, for Respondents the law or a Judges' Order is merely suggestive. Petitioner was criminally prosecuted a second time because the extension request was postmarked one day late even though Petitioner's attorney testified he mailed it timely. Petitioner's original complaint against Bette Lyons and Munroe Falls was filed on May 15, 1997 with the amended complaint filed on October 28, 1998. Bette Lyons in her individual capacity still did not answer the original complaint or amended complaint by the hearing date of August 11, 2000 before Magistrate John H. Shoemaker to address several motions including sanctions against Respondents.

Mr. Ludwig: The City has-- we just never answered individually, and I don't , Your Honor , that it's going to make a any dern different that what---

The Court: Well, then, good. You got until a

week from today to get an answer.
[see transcript of proceedings, Summit County Court of Common Pleas , August 11, 2000, pg 90.]

Bette Lyons had over three years to answer the complaint and still did not . Now that' s willfully failed , refused, or neglect to do a known duty.

At the same hearing both Attorney Stoffers and Ludwig had to admit that they willfully failed , refused, or neglect to obey Judge Cosgrove's Order regarding her discovery order .

Mr. Stoffers: I thought what I submitted was appropriate at that time. There was no objection until this motion was filed.

The Court: Well, you're telling me that you knew what the judge said in this order and you decided to be creative, apparently , and do something other than what she said because there's no doubt from what you just explained to me you knew what the procedure was by the sentence, and yet you didn't do it, did you?

[see transcript of proceedings, Summit County Court of Common Pleas , August 11, 2000, pg 90.]

Did the Court's chastising temper respondents attorneys behavior? No as the next example demonstrates.

In closing arguments Attorney Stoffers for Respondents made an issue that " We (defendants) brought in Ann Youngblood regarding. Nothing to do with Doylestown. She said unequivocally there is no 94 return in our file. And then at

the last minute they come up with an undated , unsigned one without a check". [Tr., Vol. 5, pg. 735]. The Court permitted Respondents to have Ann Youngblood testify over Petitioner's objections. Ann Youngblood was not on their witness list [Tr., Vol. 4, pg. 558] Allegedly, Youngblood was needed as a foundation witness to introduce a document. Instead ,she testified that she had no documents. Because of the surprise tactic, Petitioner was only able to find an unsigned copy in the files at hand. [Tr., Vol. 4, pg. 560]

However, Attorney Stoffers knew when conducting the direct examination of Youngblood that he was in possession of a signed 1994 Doylestown tax return. Furthermore he knew that it was withheld from submission by him to the court reporter conducting the deposition of Attorney Brent English. The questioner was Attorney Stoffers . Attorney English answered.

Q: Can I see that again? The tax return I have for Doylestown is different that the-

A: Is that what you're referring to? You can take that apart if you want?

Q: Okay. One is signed and one isn't, that's what I was-

A: Okay. Seems to be the same return.

Q: Right. The attached to it is the federal return.

[Deposition of Brent English , September 11, 2000, pp 67-70]

When Petitioner filed a Motion To Correct The Record to include the signed return, Judge Cosgrove denied the motion.

Respondents Attorneys continued the trend of unethical conduct as demonstrated by the next several examples dealing

with witnesses.

Attorney Stoffers continued his web of deceit on the Court by making sure his witnesses either have selective amnesia or downright lie and perjure themselves. Youngblood denied having a conversation with Miller-Wagenknecht until Miller-Wagenknecht produced a tape of the conversation. The audio tape would have proved that Youngblood was lying but Judge Cosgrove would not permit the tape to be played. [Tr., Vol. 4, pg. 560-565]

Bette Lyons entire testimony was essentially I don't recall, not to my knowledge responses. She was coached so well that one my be concerned that she has the early stages of Alzheimer.

On the front page of the September 3, 1999 *Akron Beacon Journal* appeared the article " **19 - CENT OVERSIGHT COST COUPLE NEARLY $900**" by Carol Biliczky. Bette Lyons had brought criminal charges against Heidi and Steve Celaschi for not paying 19 cents. The Celaschi couple denied that they received mail from Bette Lyons. Furthermore Bette Lyons goofed and did receive the payment but applied to the wrong year.[see Tr. Plaintiff's Exhibits for trial no 57].

On cross examination the following exchange occurred between Petitioner's Attorney and Bette Lyons:

Q: Have you ever had anyone say that things were mailed and not received?
A: Mailed by whom and received by whom?
Q: A taxpayer, any taxpayer in Munroe Falls?
A: Mailed by whom?
Q: You, the Tax Administrator.

A: By a taxpayer?
Q: That's correct.
A: That-whom didn't receive it?
Q: I am asking you . Has anyone said that they mailed something to you-excuse me. Was there any other time that received things in the mail that you might have mistakenly misplaced?
A: Not to my knowledge.
Q: Has there been any time that you had received things in the mail and - maybe a check or something, or payment, and misapplied it?
A: To another account ? Misapplied it to a different account?
Q: Let's say a person mailed some payment in for a tax year and it was misapplied to a different tax year?
A: What instances are you referring to?
[Tr. Vol. 4, pp 633-634]

Petitioner's counsel then requested a side bar to be permitted to ask Bette Lyons about the Celaschi's but was again denied. Does any reasonable person believe that Bette Lyons did not recall that she was lambasted in the *Akron Beacon Journal* regarding the prosecution of the Celaschi's for 19 cents especially since the article made it to the Montel Williams Show and the National Enquirer

Judge Cosgrove would not permit any testimony regarding this incident whether on direct or rebuttal. No one could locate the Celaschi(s). Not even their Attorney Tony Dayalanis. The trial court denied Petitioners to have Attorney Dayalanis testify on direct. Attorney Dayalanis would have testified that what occurred to his clients was essentially what

happened to Miller-Wagenknecht that there was no notice, Bette Lyons alleged phone calls were made by her that did not occur, items mailed to the tax administrator were alleged not received, and that Munroe Falls procedure for nonfilers was not followed by Bette Lyons. [Tr., Vol 3. Pp 481-484]

The Court also denied Petitioner permission for Attorney Dayalanis to testify to impeach Prosecutor Dwayne Jones regarding his denial that he represented complaints by Bette Lyons were without merit.[Tr. Vol 3, p. 458, pp. 484-485]

Jo Ann Raber's testimony seems to be orchestrated to comport with her close and personal friend Bette Lyons. Raber was the former Doylestown Tax Administrator who attempted to extort money from Petitioner. Raber approached Miller-Wagenknecht for money as a result of domestic violence and/or to cover legal fees. Petitioner refused. Also, Raber and Lyons had approached Miller-Wagenknecht regarding cashing in an insurance policy on her husband without his knowledge and consent. Raber seemed for desperate money. Raber represented to Miller-Wagenknecht that she would be contacted by her friend, Bette Lyons. Petitioner again refused to help Raber.

Raber at trial testified and denied having martial problems. She denied that she had come to the Wagenknechts for help, that she went to a women's shelter, and that she was a victim of domestic violence. She also had a lapse of memory over the money and Lyons involvement. Petitioner's counsel contacted the Wayne County Sheriff's Department that confirmed via fax the existence of three Domestic Violence reports S94-4515-C, S91-5305 C, and S95-5996-C. Judge Cosgrove was informed of this and other evidence that would

again prove purjured testimony. It was later established that Raber filed for divorce in 1995 , case no. 95-DR-0531. Petitioner was denied the opportunity to introduce evidence or testimony that would impeach the credibility and testimony of Raber.. Taking an oath in Judge Cosgrove's Court meant nothing. You could lie, cheat and steal and Cosgrove would turn her head and look the other way. Instead the Court let tainted testimony go to the jury . [Tr. Vol 4 pp. 526-547]

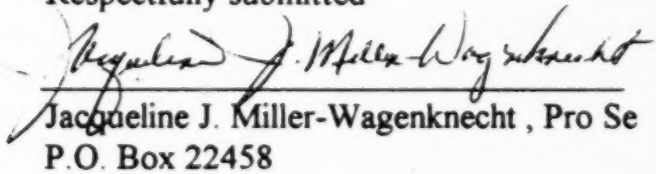
Respondents strategy worked. The false image was made. One merely has to look at the appeals court representation of facts as well as their description of Miller-Wagenknecht as the reluctant taxpayer. [Pet., App. C, pp. 23-24, 32]

Finally, Respondents voluntarily chose these attorneys as their representatives in this action, and cannot now avoid the consequences of the acts or omissions of these freely selected agents. *Link v. Wabash R.R., Co.* 370 U.S. 626, 633-34(1962)

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted



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